

KOO'S 3\_03\_06 Final.wpd

LEONARDO M. RAPADAS  
United States Attorney  
MIKEL W. SCHWAB  
Assistant U.S. Attorney  
Sirena Plaza, Suite 500  
108 Hernan Cortez Avenue  
Hagatna, Guam 96910  
Tel: 671-472-7332  
Fax: 671-472-7215

Paul Ortiz  
Senior Attorney  
Office of General Counsel  
National Oceanic and Atmospheric Administration  
501 West Ocean Blvd.  
Suite 4470  
Long Beach, California 90802  
Tel: 562 980 4069

Attorneys for the United States of America

**FILED**  
DISTRICT COURT OF GUAM

OCT - 4 2006 *Pen*

**MARY L.M. MORAN**  
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

**06-00029**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KOO'S 108,

Defendant.

CIVIL CASE NO.

**COMPLAINT FOR FORFEITURE;**  
**AFFIDAVIT OF MIKEL W.**  
**SCHWAB; IN REM WARRANT**  
**OF ARREST**

The United States of America, by and through its attorney, Mikel W. Schwab,  
Assistant U.S. Attorney for the Districts of Guam and NMI, alleges and states:

1. This is a case of admiralty and maritime jurisdiction within the meaning of  
Rule 9(h), Federal Rules of Civil Procedure, for condemnation and forfeiture of the

1 Defendant Vessel, **KOO'S 108** (hereafter the "Vessel"), including her fishing gear,  
2 furniture, appurtenances, stores, cargo, electronic and documentary records, and catch of  
3 fish, for violation of provisions of the Magnuson Fishery Conservation and Management  
4 Act (MFCMA); specifically, 16 U.S.C. §§ 1824(a), 1857(1)(A), and 1857(2)(B), and the  
5 pertinent implementing regulations 50 C.F.R. § 600.505 (a)(7), 600.501 and others.

6  
7 2. This Court has jurisdiction of this action pursuant to 16 U.S.C. §§ 1860(b) and  
8 1861(d), 28 U.S.C. §§ 1333, 1345, and 1355.

9  
10 3. The defendant Vessel, a Republic of the Marshall Islands ("RMI") flagged  
11 purse seine fishing vessel, is a 72.37 meters long, four deck vessel having a gross weight  
12 of 1,100 tons, and listed in vessel registration documentation as being owned by the  
13 KOO'S FISHING COMPANY ("KFC"), a RMI based company. The Vessel's RMI  
14 registry number is 60006, and the Vessel operates out of the RMI.

15  
16 4. The United States considers that the EEZ is that area adjacent to the United  
17 States which, except where modified to accommodate international boundaries,  
18 encompasses all waters from the seaward boundary of each of the coastal states to a line  
19 on which each point is 200 nautical miles from the baseline from which the territorial sea  
20 of the United States is measured. The United States exercises exclusive jurisdiction  
21 under the provisions of 16 U.S.C. §§ 1811 and 1812, and over which this Court has  
22 exclusive jurisdiction pursuant to 16 U.S.C. §§ 1861(d) and 1860(b).

23  
24 5. For the Vessel to be in compliance with the MFCMA while fishing within the  
25 EEZ, it must have on board a valid Pacific Insular Area Fishery Agreement permit  
26 authorizing such fishing issued by the United States Secretary of Commerce under 16  
27 U.S.C. § 1824.  
28

1           6. On January 1, 2004, the defendant Vessel deployed two fish aggregating  
2 devices ("FAD") within the United States EEZ surrounding Howland and Baker Islands,  
3 which constituted fishing within the meaning of 16 U.S.C. § 1802(15) and 50 C.F.R. §  
4 600.10. Further, on January 2, 2004, the defendant Vessel deployed four additional  
5 FADs within the United States EEZ surrounding Howland and Baker Islands. The  
6 United States exercises exclusive fishery management authority over the EEZ  
7 surrounding Howland and Baker Islands.

8  
9           7. The defendant Vessel on or about said date was fishing within the EEZ  
10 without a valid, applicable permit issued by the United States in violation of 16 U.S.C.  
11 §§ 1821, 1824(a), 1857(2), and 50 C.F.R. § 611.3(a).

12  
13           8. The defendant Vessel, including its fishing gear, furniture, appurtenances,  
14 stores, cargo, electronic and documentary records, and catch of fish will be seized by  
15 duly appointed agents of the United States Department of Commerce National Marine  
16 Fisheries Service and the United States Coast Guard upon entry into our jurisdiction.

17 *The vessel will be in the jurisdiction of the District of Guam. M*

18           9. By reason of its use in the commission of acts prohibited by 16 U.S.C. § 1857  
19 and pertinent regulations thereunder, and under the provisions of 16 U.S.C. § 1860(a),  
20 the defendant Vessel, including its fishing gear, furniture, appurtenances, stores, cargo,  
21 electronic and documentary records (including plotters, fax machines and other devices),  
22 and catch of fish is subject to forfeiture to the United States.

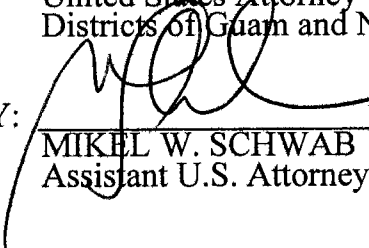
23  
24           **WHEREFORE**, Plaintiff prays that a Warrant for the Arrest of the defendant  
25 Vessel, including its fishing gear, furniture, appurtenances, stores, cargo, electronic and  
26 documentary records and catch of fish issue; and that all interested persons be duly cited  
27 to answer the premises; and Plaintiff demands judgment condemning and forfeiting the  
28 defendant Vessel, including its fishing gear, furniture, appurtenances, stores, cargo,

1 electronic and documentary records (including plotters, fax machines and other devices),  
2 and catch of fish, to the United States and for civil fines as specified by law; and for such  
3 other and further relief as may be found appropriate.

4  
5 RESPECTFULLY submitted this 2<sup>nd</sup> day of <sup>October</sup>~~September~~, 2006.

6  
7 LEONARDO M. RAPADAS  
8 United States Attorney  
9 Districts of Guam and NMI

10 BY:

11   
12 MIKEL W. SCHWAB  
13 Assistant U.S. Attorney  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28